

House Bill 2448

Sponsored by Representative DOHERTY (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires issue subject to collective bargaining during term of collective bargaining agreement that is not resolved through negotiation or mediation to be resolved through binding arbitration.

Prohibits public employees from striking when issue subject to collective bargaining during term of collective bargaining agreement is subject to binding arbitration.

A BILL FOR AN ACT

1
2 Relating to matters subject to collective bargaining during term of collective bargaining agreement;
3 amending ORS 243.698, 243.742 and 243.746.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 243.698 is amended to read:

6 243.698. (1) When the employer is obligated to bargain over employment relations during the
7 term of a collective bargaining agreement and the exclusive representative demands to bargain, the
8 bargaining may not, without the consent of both parties and provided the parties have negotiated
9 in good faith, continue past [90] **60** calendar days after the date the notification specified in sub-
10 section (2) of this section is received.

11 (2) The employer shall notify the exclusive representative in writing of anticipated changes that
12 impose a duty to bargain.

13 (3) Within 14 calendar days after the employer's notification of anticipated changes specified in
14 subsection (2) of this section is sent, the exclusive representative may file a demand to bargain. If
15 a demand to bargain is not filed within 14 days of the notice, the exclusive representative waives
16 its right to bargain over the change or the impact of the change identified in the notice.

17 (4) The expedited bargaining process shall cease [90] **60** calendar days after the written notice
18 described in subsection (2) of this section is sent[, *and the employer may implement the proposed*
19 *changes without further obligations to bargain*]. At any time during the [90-day] **60-day** period, the
20 parties jointly may agree to mediation, but that mediation [*shall*] **may** not continue past the
21 [90-day] **60-day** period from the date the notification specified in subsection (2) of this section is
22 sent. Neither party may seek binding arbitration during the [90-day] **60-day** period.

23 **(5) If the parties fail to reach an agreement through bargaining or mediation, upon ex-**
24 **piration of the 60-day period:**

25 **(a) The matter shall be submitted to the Employment Relations Board for binding arbi-**
26 **tration as provided by ORS 243.742 and 243.746; and**

27 **(b) The employees in the bargaining unit subject to the binding arbitration may not**
28 **strike.**

29 **SECTION 2.** ORS 243.742 is amended to read:

30 243.742. (1) It is the public policy of the State of Oregon that where the right of employees to

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 strike is by law prohibited, it is requisite to the high morale of such employees and the efficient
 2 operation of such departments to afford an alternate, expeditious, effective and binding procedure
 3 for the resolution of labor disputes and to that end the provisions of ORS 240.060, 240.065, 240.080,
 4 240.123, 243.650 to 243.782, 292.055 and 341.290, providing for compulsory arbitration, shall be liber-
 5 ally construed.

6 (2) When the procedures set forth in ORS **243.698**, 243.712 and 243.722, relating to mediation of
 7 a labor dispute, have not culminated in a signed agreement between the parties who are prohibited
 8 from striking, the public employer and exclusive representative of its employees shall include with
 9 the final offer filed with the mediator a petition to the Employment Relations Board in writing
 10 [which] **that** initiates binding arbitration for bargaining units with employees referred to in ORS
 11 243.736 (1). Arbitration shall be scheduled by mutual agreement not earlier than 30 days following
 12 the submission of the final offer packages to the mediator. Arbitration shall be scheduled in ac-
 13 cordance with the procedures prescribed in ORS 243.746.

14 **SECTION 3.** ORS 243.746, as amended by section 1, chapter 878, Oregon Laws 2009, is amended
 15 to read:

16 243.746. (1) In carrying out the arbitration procedures authorized in ORS **243.698**, 243.712 (2)(e),
 17 243.726 (3)(c) and 243.742, the public employer and the exclusive representative may select their own
 18 arbitrator.

19 (2) Where the parties have not selected their own arbitrator within five days after notification
 20 by the Employment Relations Board that arbitration is to be initiated, the board shall submit to the
 21 parties a list of seven qualified, disinterested, unbiased persons. A list of Oregon interest arbi-
 22 trations and fact-findings for which each person has issued an award shall be included. Each party
 23 shall alternately strike three names from the list. The order of striking shall be determined by lot.
 24 The remaining individual shall be designated the "arbitrator":

25 (a) When the parties have not designated the arbitrator and notified the board of their choice
 26 within five days after receipt of the list, the board shall appoint the arbitrator from the list. How-
 27 ever, if one of the parties strikes the names as prescribed in this subsection and the other party fails
 28 to do so, the board shall appoint the arbitrator only from the names remaining on the list.

29 (b) The concerns regarding the bias and qualifications of the person designated by lot or by
 30 appointment may be challenged by a petition filed directly with the board. A hearing shall be held
 31 by the board within 10 days of filing of the petition and the board shall issue a final and binding
 32 decision regarding the person's neutrality within 10 days of the hearing.

33 (3) The arbitrator shall establish dates and places of hearings. Upon the request of either party
 34 or the arbitrator, the board shall issue subpoenas. Not less than 14 calendar days prior to the date
 35 of the hearing, each party shall submit to the other party a written last best offer package on all
 36 unresolved mandatory subjects, and neither party may change the last best offer package unless
 37 pursuant to stipulation of the parties or as otherwise provided in this subsection. The date set for
 38 the hearing may thereafter be changed only for compelling reasons or by mutual consent of the
 39 parties. If either party provides notice of a change in its position within 24 hours of the 14-day
 40 deadline, the other party will be allowed an additional 24 hours to modify its position. The arbitrator
 41 may administer oaths and shall afford all parties full opportunity to examine and cross-examine all
 42 witnesses and to present any evidence pertinent to the dispute.

43 (4) Where there is no agreement between the parties, or where there is an agreement but the
 44 parties have begun negotiations or discussions looking to a new agreement or amendment of the
 45 existing agreement, unresolved mandatory subjects submitted to the arbitrator in the parties' last

1 best offer packages shall be decided by the arbitrator. Arbitrators shall base their findings and
 2 opinions on these criteria giving first priority to paragraph (a) of this subsection and secondary
 3 priority to paragraphs (b) to (h) of this subsection as follows:

4 (a) The interest and welfare of the public.

5 (b) The reasonable financial ability of the unit of government to meet the costs of the proposed
 6 contract giving due consideration and weight to the other services, provided by, and other priorities
 7 of, the unit of government as determined by the governing body. A reasonable operating reserve
 8 against future contingencies, which does not include funds in contemplation of settlement of the la-
 9 bor dispute, shall not be considered as available toward a settlement.

10 (c) The ability of the unit of government to attract and retain qualified personnel at the wage
 11 and benefit levels provided.

12 (d) The overall compensation presently received by the employees, including direct wage com-
 13 pensation, vacations, holidays and other paid excused time, pensions, insurance, benefits, and all
 14 other direct or indirect monetary benefits received.

15 (e) Comparison of the overall compensation of other employees performing similar services with
 16 the same or other employees in comparable communities. As used in this paragraph, “comparable”
 17 is limited to communities of the same or nearest population range within Oregon. Notwithstanding
 18 the provisions of this paragraph, the following additional definitions of “comparable” apply in the
 19 situations described as follows:

20 (A) For any city with a population of more than 325,000, “comparable” includes comparison to
 21 out-of-state cities of the same or similar size;

22 (B) For counties with a population of more than 400,000, “comparable” includes comparison to
 23 out-of-state counties of the same or similar size;

24 (C) Except as otherwise provided in subparagraph (D) of this paragraph, for the State of Oregon,
 25 “comparable” includes comparison to other states; and

26 (D) For the Department of State Police troopers, “comparable” includes the base pay for city
 27 police officers employed by the five most populous cities in this state.

28 (f) The CPI-All Cities Index, commonly known as the cost of living.

29 (g) The stipulations of the parties.

30 (h) Such other factors, consistent with paragraphs (a) to (g) of this subsection as are tradi-
 31 tionally taken into consideration in the determination of wages, hours, and other terms and condi-
 32 tions of employment. However, the arbitrator shall not use such other factors, if in the judgment
 33 of the arbitrator, the factors in paragraphs (a) to (g) of this subsection provide sufficient evidence
 34 for an award.

35 (5) Not more than 30 days after the conclusion of the hearings or such further additional periods
 36 to which the parties may agree, the arbitrator shall select only one of the last best offer packages
 37 submitted by the parties and shall promulgate written findings along with an opinion and order. The
 38 opinion and order shall be served on the parties and the board. Service may be personal or by reg-
 39 istered or certified mail. The findings, opinions and order shall be based on the criteria prescribed
 40 in subsection (4) of this section.

41 (6) The cost of arbitration shall be borne equally by the parties involved in the dispute.